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No. 02-127

IN THE SUPREME COURT OF THE UNITED STATES

JOSEPH McGRATH, Warden; BILL LOCKYER, Attorney General of California, *Petitioners,*

v.

MICHAEL SU CHIA, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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No. 02-127

JOSEPH McGRATH, Warden; BILL LOCKYER, Attorney General of California, *Petitioners,*

v.

MICHAEL SU CHIA, *Respondent.*

On July 19, 2002, Petitioner, Joseph McGrath, Warden of the California State Prison at Pelican Bay, Crescent City, California ("the State"), filed a Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit ("Pet."). On December 4, 2002, Chia filed his Brief in Opposition to Petition for Writ of Certiorari ("Opp'n"). The State respectfully submits the following reply.

I.

THIS COURT SHOULD GRANT CERTIORARI ON WHAT RULE, IF ANY, IS "CLEARLY ESTABLISHED" BY *CHAMBERS V. MISSISSIPPI*, WITHIN THE MEANING OF 28 U.S.C. § 2254(d)

At Chia's trial, the state trial court excluded statements made by Wang because it found the statements were unreliable hearsay. The Ninth Circuit Court of Appeals reversed Chia's conviction, finding the state court had unreasonably applied the "clearly established" rule in *Chambers v. Mississippi*, 410 U.S. 284 (1973). *Chia v. Cambra*, 281 F.3d 1032 (9th Cir. 2002).

The State submits this Court should grant certiorari to resolve the conflict over what, if any, is the clearly established rule of *Chambers*. (Pet. at 8-14.) Chia's disagreement with the State on the meaning of *Chambers* bolsters the State's argument that there is a conflict over the "clearly established" rule of *Chambers*.

Chia first contends that *Chambers* announced no new rule and simply held that a defendant is entitled to a trial in accordance with due process. *Chambers*, 410 U.S. at 302; Opp'n at 8-9. He then notes this Court has characterized *Chambers* as holding that "the Due Process Clause affords criminal defendants the right to introduce into evidence third parties' declarations against penal interest -- their confessions -- when the circumstances surrounding the statements 'provide considerable assurance of their reliability.'" *Lilly v. Virginia*, 527 U.S. 116, 130 (1999); Opp'n at 9. Chia then concludes *Chambers* clearly stands for the proposition that the exclusion of reliable, critical defense evidence violates due process. (Opp'n at 10.) But Chia later states his claim was premised on the criminal defendant's right to present "key evidence" in his defense. (Opp'n 16.) Of course, in *Montana v. Egelhoff*, 518 U.S. 37 (1996), a plurality of this Court characterized *Chambers* as "an exercise in highly case-specific error correction" and questioned whether *any* holding could be "discerned from such a fact-intensive case." *Id.* at 52-53 (Scalia, J., plurality opinion). Thus, the obvious query is which of these does *Chambers* stand for: (1) a defendant is entitled to due process;

(2) a defendant has a right to present evidence in his defense; (3) a defendant's right to due process entitles him to the admission of critical, reliable evidence; (4) a defendant's right to due process entitles him to the admission of reliable third-party declarations against interest; or (5) a defendant's right to due process entitles him to the admission of third-party declarations against interest under the unique facts in *Chambers*.

Chia claims that all of circuits have recognized, albeit at "different levels of abstraction," that *Chambers* requires the admission of crucial reliable evidence. (Opp'n at 10-11.) While courts have interpreted the "rule" of *Chambers* in a way consistent with requiring the admission of crucial reliable evidence, some courts have interpreted *Chambers* more narrowly than that.

For instance, the Second Circuit held that *Chambers* announced a three-part test for trustworthiness requiring admission of statements that: (a) are made spontaneously to close friends shortly after the event; (b) are corroborated by other evidence; and (c) are self-incriminating and unquestionably against penal interest. *United States v. DeVillio*, 983 F.2d 1185, 1190 (2d Cir. 1993). If that is the "clearly established" rule of *Chambers*, then *Chambers* has no application in this case where the statements were made to police officers as a result of interrogation– not spontaneously made to friends —and where the hearsay statement purports to address the culpability of someone other than the declarant himself.

Since the petition was filed, the Sixth Circuit specifically rejected a habeas petitioner's claim that *Chambers* stands for the broad proposition that a defendant is entitled to the admission of critical reliable evidence. *Alley v. Bell*, 307 F.3d 380, 394 (6th Cir. 2002). Rather, the court of appeals said *Chambers* "stand[s] for the more limited proposition that a defendant's due process rights are violated when a state court excludes important evidence on the basis of an arbitrary, mechanistic, or per se rule, or one that is disproportionate to the purposes it is designed to serve." *Id.; accord, Scott v. Mullin*, 303 F.3d 1222, 1231 n.5 (10th Cir. 2002) (characterizing *Chambers* as prohibiting "mechanical application" of hearsay rules where constitutional rights are directly affected and ascertainment of guilt is implicated). Again, if that is the "clearly established"

rule of *Chambers*, then *Chambers* has no application in this case where the statements were excluded because the trial court found, independent of any state evidentiary rules, that Wang's statements were inadmissible because they were unreliable.

Resolution of the "clearly established" rule of *Chambers* the necessarily involves examination of the meaning of "clearly established" within the meaning of 28 U.S.C. § 2254(d)(1). (Pet. at 13-14; *cf.* Opp'n at 11.) Although Chia asserts that the rule requiring the admission of crucial and reliable evidence is "clearly established" as shown by this Court repeatedly articulating this principle, he fails to identify any such Supreme Court cases. The Ninth Circuit's holding that there was a rule "clearly established" in *Chambers*, despite the various interpretations of *Chambers,* conflicts with the decisions of other circuits holding that determining whether a rule is "clearly established" requires analysis similar to *Teague v. Lane*, 489 U.S. 288 (1989). *See Morris v. Reynolds*, 264 F.3d 38, 46 (2d Cir. 2001), *cert. denied*, 122 S. Ct. 2381 (2002); *Daniels v. United States*, 254 F.3d 1180, 1195 (10th Cir. 2001); *Harris v. Stovall*, 212 F.3d 940, 944 (6th Cir. 2000); Pet. at 13. Thus, the Court should grant certiorari to resolve the conflicts and decide this important question.

II.

THIS COURT SHOULD GRANT CERTIORARI ON THE "UNREASONABLE APPLICATION" STANDARD IN 28 U.S.C. § 2254(d)(1) AND WHETHER THE STATE COURT UNREASONABLY APPLIED *CHAMBERS* IN THIS CASE

The State also submits this Court should grant certiorari on the conflict over the "unreasonable application" standard of 28 U.S.C. § 2254(d)(1) and whether the court of appeals properly applied that standard in this case. Chia does not dispute that there are different interpretations "unreasonable application" standard exist. Rather, he contends that under any standard the exclusion of Wang's statements violated due process. (Opp'n at 13.)

But the standard of review makes a critical difference. As noted by Chia, the court of appeals in this case said they would only reverse if the state court's decision if the "'application of the federal law . . . was erroneous – in other words that clear error occurred.'" *Chia v. Cambra* 281 F.3d at 1037; *but see Williams v. Taylor*, 529 U.S. 362, 411 (2000) (a state court decision that is "erroneous" is not enough for relief under 28 U.S.C. § 2254(d)(1)). Most circuits find, in accordance with this Court's case law, that the state court's conclusion must also be objectively unreasonable. *Lorraine v. Coyle*, 291 F.3d 416, 422 (6th Cir. 2002), *corrected and rehg. denied at* 307 F.3d 459; *Tucker v. Johnson*, 242 F.3d 617, 620-21 (5th Cir.), *cert. denied*, 533 U.S. 972 (2001); *Bell v. Jarvis*, 236 F.3d 149, 161-62 (4th Cir.), *cert. denied*, 122 S. Ct. 74 (2001); *Francis S. v. Stone*, 221 F.3d 100, 109-10 (2d Cir. 2000). Although the state court's decision was not even erroneous, it certainly was not unreasonable.

This case does not have facts "remarkably similar" to those in *Chambers v. Mississippi*. (*Cf.* Opp'n at 7.) Certainly, both cases involve the trial court's exclusion of hearsay. But the fundamental factual differences between the two cases go to the heart of why exclusion was improper in *Chambers* and proper in this case. In *Chambers* the excluded statements were made spontaneously to friends, while Wang made his statements

during a interrogation by police officers. In *Chambers* the statements made admitted guilt to a single-person shooting, thereby necessarily absolving the defendant. Wang's statements admitting guilt did not exculpate Chia. Moreover, the defendant in *Chambers* had no other means of producing the crucial exculpatory evidence. Here, in contrast, Chia could have taken the witness stand and testified about the same matters that Wang's hearsay addressed, i.e., Chia's own conduct.

For instance, in his first and second statement, Wang admitted being part of the conspiracy to rob, but he never mentioned Chia. Wang's admissions to the crimes did not necessarily exculpate Chia. In fact, if Chia were involved, Wang had obvious motives to lie and conceal Chia's involvement, namely to help Chia escape arrest.

In the third and fourth statements, Wang said Chia was not involved in the conspiracy. These statements did not inculpate of Wang at all and Wang had the same motives to lie about Chia's involvement.

Wang also said he told Chia about the plot but Chia warned Wang against the participating. Given Wang had already admitting planning robbery and murder, Wang's admission that he told Chia of the plot was no longer against Wang's interest. In addition, Wang said Chia drove Wang to Kow's apartment in Chia's car the night before the ambush so Wang could deliver a gun and ammunition to Kow. On the following morning, Chia drove Wang back to Kow's apartment and left. Chia was also present at the restaurant parking lot to protect him. Contrary to Chia's assertion and the conclusion of the Court of Appeals, these statements were not particularly inculpatory to Wang because Wang had already admitted planning the robbery. *Cf. Chia v. Cambra*, 281 F.3d at 1037; Opp'n at 13. Moreover, the statements were not particularly exculpatory of Chia. They showed Chia knew about the conspiracy and participated in it despite having reservations about it.

Chambers was very different. The statements in *Chambers*, admitting committing the shooting, were clearly inculpatory. And, under the facts of *Chambers*, the admissions were necessarily exculpatory to the defendant. Here, Wang's admissions to participation do not exculpate Chia, since Chia could have also been involved.

The State has not relied on the reliability of Wang's

statements as Chia has asserted. Contrary to Chia's assertion (Opp'n at 4-5, 14), only Wang's fourth statement was admitted at Wang's trial. Moreover, the prosecution in Wang's trial called the interviewing officer to testify about Wang's statement, and Wang's statements about Chia's involvement were largely not elicited, presumably because the prosecution believed they did not demonstrate Wang's guilt. In any event, Chia was tried before Wang, so Chia did not and could not argue to the trial court that the reliability of Wang's statements was shown by the prosecution's use of Wang's statements at Wang's trial. Chia did not rely on this circumstance in his petition for writ of habeas corpus, and it was not considered by the Ninth Circuit.

Chia has not "maintained all along that he tried to convince one of the shooters, Wang, out of the plot to kill . . . ." (*Cf.* Opp'n at 3.) In Chia's first statement to the police after his arrest, he denied any involvement and claimed he just happened to be at the restaurant at the time Wang and the others began their actions that ultimately ended in the ambush murders of the DEA agents. Moreover, in Chia's second statement he claimed he knew of the plan to "rip off" the DEA agents, whom he thought were drug dealers. Chia and Wang had agreed that he would hide near the restaurant the following morning to act as Wang's bodyguard and lookout because he was concerned for Wang's safety. But Chia claimed he never saw Wang and left the restaurant before the crime occurred. Chia never asserted that he tried to convince Wang not to participate.

Thus, the Ninth Circuit's conclusion the state trial court erred was incorrect. But even if the state trial court erred, the state court did not unreasonably apply *Chambers* in concluding Wang's statements were insufficiently reliable to compel admission. Given the different standards used in reviewing the state court decision, and the possible determinative impact it would have in this case, the Court should grant certiorari to resolve the conflicts and decide this important question.

CONCLUSION

For the above reasons and in the Petition, the petition for writ of certiorari should be granted.

Dated: December 9, 2002.

Respectfully submitted,

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